

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:04-CR-16-H
No. 4:16-CV-200-H

TYRENE SHERMAN GRIFFIN,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent.

ORDER

This matter is before the court on Petitioner's Motion to Vacate pursuant to 28 U.S.C. § 2255 [D.E. #34]. The government filed a response on September 28, 2016, consenting to this court's entry of an order vacating Petitioner's sentence in light of the recent United States Supreme Court case Johnson v. United States, 135 S.Ct. 2551 (2015). This matter is ripe for adjudication.

As argued in the government's response, in light of the Supreme Court's ruling in Welch v. United States, 136 S.Ct. 1257 (2016) (holding Johnson decision retroactively applicable on collateral review), and applicable Fourth Circuit precedent, Petitioner's prior North Carolina convictions for indecent liberties with a child can no longer be considered predicate violent felonies used to enhance his sentence under the Armed Career Criminal Act, see United States v. Vann, 660 F.3d 771 (4th

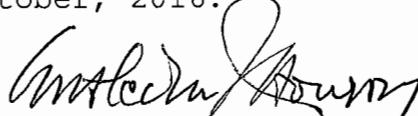
Cir. 2011). Petitioner's sentence, therefore, shall be vacated, and he shall be resentenced.

CONCLUSION

For the foregoing reasons and without objection from the government, Petitioner's motion to vacate his sentence, [D.E. #34], is GRANTED. This matter is SCHEDULED for resentencing on the **November 8, 2016 term of court**. Petitioner shall remain in custody pending the resentencing hearing.

The Federal Public Defender of the Eastern District of North Carolina ("FPD") is DIRECTED to continue representing Petitioner in connection with the resentencing. The United States Probation Office ("USPO") is DIRECTED to provide the parties and the court with a resentencing memorandum. The clerk is DIRECTED to serve a copy of this order on the FPD and the USPO.

This 5th day of October, 2016.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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